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Art. 6, 10 EVRM

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Google weigert bepaalde YouTube-video's te verwijderen en een geblokkeerd YouTube-kanaal te herstellen. De Russische autoriteiten leggen daarop een zeer hoge boete op, alsmede een last onder dwangsom. De rechterlijke beslissingen in de daarop volgende procedure zijn onvoldoende gemotiveerd. Schending vrijheid van meningsuiting (art. 10 EVRM) en eerlijk proces (art. 6 EVRM).

Verzoeker, aanbieder van (video)website YouTube, weigert om bepaalde door gebruikers geplaatste video's met politieke inhoud te verwijderen. De Russische autoriteiten leggen daarop zeer hoge geldboetes op (omgerekend in totaal ruim € 288 miljoen). Daarnaast weigert verzoeker over te gaan tot herstel van een YouTube-kanaal dat gelieerd was aan een wegens oorlogssancties geblokkeerde Russische omroep. Ter zake wordt een oplopende dwangsom opgelegd (omgerekend ruim € 1.000 per dag), wekelijks verdubbelend, die binnen negen maanden kon uitgroeien tot een praktisch onbeperkt bedrag. Verzoeker zag zich genoodzaakt grote bedragen te betalen en moest zijn Russische vestiging sluiten.

Het EHRM oordeelt dat de opgelegde maatregelen een ongeoorloofde inbreuk vormen op verzoekers eigen recht op vrije meningsuiting. De boetes en dwangsom zetten oneigenlijke druk op verzoeker om politieke en maatschappelijke inhoud te censureren respectievelijk een spreekbuis te bieden voor door de staat gesanctioneerde informatie. Zo deze beperkingen al een legitiem doel dienden, waren zij in ieder geval niet noodzakelijk in een democratische samenleving (rov. 70-101). Voorts constateert het Hof dat de Russische rechterlijke beslissingen onvoldoende zijn gemotiveerd. Zij gaven onder meer geen inzicht in de berekening van de boetes, negeerden contractuele forumkeuzeclausules en passeerden ongemotiveerd diverse essentiële verweren van verzoeker. Hiermee werd de essentie van het recht op een gemotiveerde rechterlijke beslissing ondergraven (rov. 102-107). Het Hof concludeert unaniem tot schending van art. 10 en art. 6 lid 1 EVRM.

* Prof. mr. E.J. Dommering heeft het besluit genomen na vijfendertig jaar zijn werkzaamheden als annotator te beëindigen. De in deze aflevering opgenomen annotatie is daarmee de laatste in een lange reeks van in totaal 196. De eerste annotatie betrof een uitspraak van het EHRM, *NJ* 1991/522.

Google LLC e.a.
tegen
Rusland

The law

I. Preliminary issues

A. Consequences of the Government's failure to participate in the proceedings

51. The Court notes that the respondent Government, by failing to submit written observations when invited to do so, manifested an intention to abstain from participating in the examination of the case. However, the cessation of a Contracting Party's membership in the Council of Europe does not release it from its duty to cooperate with the Convention bodies. Consequently, the Government's failure to engage in the proceedings cannot constitute an obstacle to the examination of the case (see *Svetova and Others v. Russia*, no. 54714/17, §§ 29–31, 24 January 2023).

B. Examination of complaints by Google Russia

52. The applicant companies informed the Court that their observations had been submitted on behalf of all Google entities except OOO Google ('Google Russia'). They submitted that the liquidator appointed on 18 October 2023 was hostile to the company's interests, and that, as a matter of Russian law, his appointment effectively extinguished their representatives' authority to act on behalf of Google Russia.

53. The Court takes note of the applicants' submission but finds no grounds for attributing legal consequences to it. First, the Court cannot discontinue proceedings in respect of OOO Google, as the representatives have not submitted a formal request to withdraw the complaint; such a request, in order to be valid, must be unequivocal (see *Association SOS Attentats and de Boery v. France* (dec.) [GC], no. 76642/01, § 30, ECHR 2006-XIV). Secondly, the liquidation of an applicant company and the expiry of its powers of attorney under domestic law do not impede its representatives from continuing to act before the Court. The Court emphasises in this respect that the alleged violations of Article 6 of the Convention brought about Google Russia's bankruptcy and its ceasing to exist as a legal person. Striking the application out of the list under such circumstances would undermine the very essence of the right of individual applications by legal persons, as it would encourage governments to deprive such entities of the possibility to pursue an application lodged at a time when they enjoyed legal personality (see *Capital Bank AD v. Bulgaria*, no. 49429/99, §§ 76–80, ECHR 2005-XII (extracts), and *OAO Neftyanaya kompaniya YUKOS v. Russia* (dec.), no. 14902/04, §§ 439-44, 29 January 2009). Thirdly, the Court's commitment to upholding human rights requires it to continue examining cases that raise issues of general interest beyond their specific cir-

cumstances. It has a particular responsibility to determine issues on public-policy grounds in the common interest, thereby raising the general standard of human rights protection.

C. Jurisdiction

54. The Court observes that the facts giving rise to the alleged interference with the Convention rights occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine this application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68–73, 17 January 2023, and *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, § 46, 6 June 2023).

II. Alleged violation of Article 10 of the Convention in connection with administrative proceedings against Google LLC

55. Google LLC complained that the Russian authorities had imposed arbitrary and unprecedented fines to punish it for providing a platform for content critical of their policies, in breach of Article 10 of the Convention, which reads as follows:

> '1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority …
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, … for the protection of the reputation or rights of others …'

A. Admissibility

56. The Court finds that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by Google LLC

57. Google LLC submitted that the imposition and enforcement of penalties against it in connection with the YouTube content it hosted constituted an interference with its right to freedom of expression.

58. As to whether the interference was 'prescribed by law', Google LLC maintained that section 15.3 of the Information Act lacked the requisite quality of law. The terms 'untrue socially important information disseminated under the guise of reliable reports' and 'calls … to extremist activities' were excessively broad and conferred unfettered discretionary powers on the authorities. In addition, the proceedings suffered from serious procedural flaws: no administrative investigation had preceded the prosecution as mandated by domestic law; the courts had assumed jurisdiction over Google LLC, a US-based entity, without proper service or an opportunity for it to be heard; the turnover-based fines had been unlawful, and no consideration had been given to mitigating factors.

59. Google LLC further claimed that the interference pursued no legitimate aim. The domestic courts had not engaged in any substantive analysis of this question, while the Government had declined to participate in the proceedings before the Court. Given the nature of the content targeted by the TDRs, such as expression of political opposition and reporting on the military invasion of Ukraine, and the unprecedented scale of the penalties imposed, the only reasonable inference was that the true aim had been to suppress criticism of the authorities and to deter the hosting of dissenting viewpoints.

60. Lastly, Google LLC contended that the interference was not 'necessary in a democratic society'. The punitive fines had been imposed for refusing to remove content constituting typical political speech, which enjoys the highest level of protection under the Convention. The measures also disregarded YouTube's role as a technological platform hosting content created by third parties rather than by Google LLC itself. The free exchange of ideas through such platforms was fundamentally at odds with a legal framework permitting authorities to impose severe penalties for failing to remove content of which they disapproved.

2. General principles

61. In order to be justified, an interference with the right to freedom of expression must be 'prescribed by law', pursue one or more of the legitimate aims mentioned in paragraph 2 of Article 10, and be 'necessary in a democratic society' (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 181, 8 November 2016 (*NJ* 2017/431, m.nt. E.J. Dommering; *red.*)). The general principles concerning the question whether an interference with freedom of expression is 'necessary in a democratic society' are well established in the Court's case-law, both generally and in the context of the Internet and social media (see *Delfi AS v. Estonia* [GC], no. 64569/09, §§ 131-36, ECHR 2015 (*NJ* 2016/457, m.nt. E.J. Dommering; *red.*), and *Sanchez v. France* [GC], no. 45581/15, §§ 158-66, 15 May 2023).

62. Given its accessibility and capacity to store and communicate vast amounts of information, the Internet plays a key role in enhancing public access to news and facilitating the dissemination of information generally (see *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 27, ECHR 2009 (*NJ* 2010/109, m.nt. E.J. Dommering; *red.*)).

63. Article 10 applies to 'everyone', including legal persons and profit-making companies en-

gaged in commercial activities (see *Autronic AG v. Switzerland*, 22 May 1990, § 47, Series A no. 178). Information society service providers perform an important role in facilitating access to information and debate on a wide range of political, social and cultural topics. The Court has previously acknowledged that both Google Inc., the predecessor entity to Google LLC, and its end users enjoy the right to freedom of expression guaranteed by Article 10 (see *Tamiz v. the United Kingdom* (dec.), no. 3877/14, § 90, 19 September 2017).

64. Furthermore, the Court has acknowledged that YouTube, a video hosting service owned and operated by Google LLC, constitutes 'a unique platform' for freedom of expression due to its characteristics, accessibility and potential impact in enabling users to receive and impart information and ideas (see *Cengiz and Others v. Turkey*, nos. 48226/10 and 14027/11, § 52, ECHR 2015 (extracts) (*NJ* 2016/337, m.nt. E.J. Dommering; *red.*)).

65. The Court finally reiterates that, in principle, any measure compelling a platform operator to restrict access to content under threat of penalty constitutes interference with freedom of expression (see *Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. v. Turkey (no. 1)*, nos. 64178/00 and 4 others, § 73, 30 March 2006).

3. Existence of interference

66. In the present case, the Russian authorities imposed substantial fines on Google LLC, amounting to billions of Russian roubles, for failing to comply with TDRs concerning user-generated content hosted on YouTube. The Court considers that the imposition of such severe penalties, combined with the threat of further sanctions for non-compliance with TDRs, exerted considerable pressure on Google LLC to censor content on YouTube, thereby interfering with its role as a provider of a platform for the free exchange of ideas and information.

67. In these circumstances, the Court finds that there has been an interference with Google LLC's right to freedom of expression as guaranteed by Article 10 of the Convention.

4. Justification for the interference

(a) 'Prescribed by law'

68. The Court observes at the outset that the contested measures had a basis in Article 13.41 of the CAO and section 15.3 of the Information Act, which allowed for the imposition of fines on owners of information resources who failed to comply with TDRs concerning, among other things, 'untrue socially important information disseminated under the guise of reliable reports'.

69. The Court notes that Google LLC impugned the quality of Russian law in this regard, contending that the provisions of section 15.3 of the Information Act lacked the requisite clarity and foreseeability. However, having regard to its findings below concerning the necessity of the interference in a democratic society, the Court does not consider it necessary to reach a definitive conclusion on this point (see *Novaya Gazeta and Others v. Russia*, nos. 11884/22 and 161 others, § 101, 11 February 2025).

(b) Legitimate aim

70. The Court notes that the Government did not submit any observations on the aims pursued by the impugned measures, having chosen not to participate in the proceedings before the Court. It appears however that the domestic courts considered the protection of national security, territorial integrity and public safety as the ostensible aims of the legislation under which the applicant company was convicted.

71. The Court reiterates that while the protection of national security, territorial integrity and public safety may in principle constitute legitimate aims, these concepts must be applied with restraint and interpreted restrictively, and should only be brought into play where it has been shown to be necessary to suppress the release of information (see *Novaya Gazeta and Others*, cited above, § 103, and *Stoll v. Switzerland* [GC], no. 69698/01, § 54, ECHR 2007-V (*NJ* 2008/236, m.nt. E.J. Dommering; *red.*)).

72. The Court observes that the impugned measures were applied indiscriminately to a broad range of content on YouTube, including political expression, criticism of the Russian Government, reporting on Russia's invasion of Ukraine by independent news outlets and content supporting LGBTQ rights. The Court finds it difficult to ascertain how such expressions of political opinion or independent reporting could constitute a genuine threat to national security, territorial integrity or public safety (compare *Novaya Gazeta and Others*, cited above, § 104). Furthermore, the Court notes that the domestic authorities made no effort to demonstrate how Google LLC's specific decision to host such content caused or threatened harm to these interests. The mere fact that the content diverged from the official narrative was deemed sufficient to justify the imposition of penalty.

73. In these circumstances, the Court is not satisfied that the interference genuinely pursued any legitimate aims. However, even assuming that it did, the Court will examine whether it was 'necessary in a democratic society' to achieve those aims.

(c) 'Necessary in a democratic society'

74. The Court reiterates that the adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Court has consistently emphasised that there is little scope under Article 10 § 2 for restrictions on political speech or on debate concerning matters of public interest (see *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV). The limits of permissible criticism are wider with regard to the government than to a private citizen or even a politician. In a democratic system, the actions or omissions of the government must be subject to

close scrutiny not only by the legislative and judicial authorities but also by the press and public opinion (see *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236 (*NJ* 1994/102, m.nt. E.J. Dommering; *red.*)).

75. The Court observes that the content at issue included expressions of support for an imprisoned opposition figure, calls for peaceful demonstrations, and information regarding Russia's military actions in Ukraine from independent news outlets. Such material undoubtedly concerns matters of significant public interest, particularly in the context of an armed conflict with profound implications for European and global security. This very characteristic, which enabled the domestic authorities to classify the content as 'socially important information' for the purposes of section 15.3 of the Information Act, likewise brought it within the scope of protected expression under Article 10 of the Convention. Public debate on such matters is crucial in a democratic society, and any restriction on such debate calls for the Court's closest scrutiny (see *Novaya Gazeta and Others*, cited above, § 112).

76. The Court further observes that none of the content which the authorities sought to suppress contained expressions of hate speech, incitement to violence, or discrimination against any group. The sole basis for requiring their removal appears to have been their capacity to inform public debate on matters which the authorities preferred to suppress. The Court reiterates that Article 10 protects not only information or ideas that are favourably received or regarded as inoffensive, but also those that offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society' (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24 (*NJ* 1978/236; *red.*)).

77. Furthermore, in respect of the requirement under section 15.3 of the Information Act that the information be untrue and create specific risks, such as risk of mass disorder or to public security or infrastructure, the domestic courts failed to assess whether the content at issue in fact was untrue or posed such risks. They did not examine the actual impact or reach of the content or evaluate whether it had caused or was likely to cause any harm. Instead, the courts proceeded on the presumption that any divergence from official narratives inherently threatened national interests, without providing any concrete evidence of harm (see *Novaya Gazeta and Others*, cited above, § 119).

78. The Court further reiterates its established case-law that Article 10 protects both the content of ideas and information and the methods of their dissemination, as any restriction on those methods interferes with the right to receive and impart information (see *Autronic AG*, cited above, § 47). YouTube functions primarily as a technological platform for storing and sharing user-generated content and serves as 'an important means of exercising the freedom to receive and impart information and ideas' (see *Cengiz and Others*, cited above, § 52 (*NJ* 2016/337, m.nt. E.J. Dommering; *red.*)). The platform's significance lies in its role as a forum where users can share diverse viewpoints on matters of public interest, including those that may not find expression in traditional media.

79. The Court has previously emphasised the specific nature of the Internet as a modern means of imparting and receiving information, recognising that the 'duties and responsibilities' imposed on an Internet portal, for the purposes of Article 10 of the Convention, may differ to some extent from those of a traditional publisher in relation to third-party content (see *Delfi AS*, cited above, § 113 (*NJ* 2016/457, m.nt. E.J. Dommering; *red.*)). At the same time, the Court notes that when internet intermediaries manage content available on their platforms or play a curatorial or editorial role, including through the use of algorithms, their important function in facilitating and shaping public debate engenders duties of care and due diligence, which may also increase in proportion to the reach of the relevant expressive activity (...).

80. In the present case, however, the Court considers that penalising Google LLC for hosting content critical of government policies or presenting alternative views on military actions, without demonstrating a pressing social need for its removal, strikes at the very heart of the Internet's function as a means for the free exchange of ideas and information.

81. As regards the proportionality of the sanctions, the Court notes the nature and scale of the penalties imposed. The fines, calculated as substantial lump sums or a percentage of the combined revenue of Google LLC and 'affiliated' companies and amounting to billions of Russian roubles, by their nature and scale, were liable to have a 'chilling effect' on its willingness to host content critical of the authorities. The approach adopted by the Russian authorities, which imposed heavy penalties on platforms for failing to comply with broadly framed TDRs, placed an excessive burden on intermediaries such as Google LLC, effectively compelling them to act as censors of political speech on behalf of the State authorities, an approach incompatible with the Court's approach to freedom of expression. This cannot be regarded as necessary in a democratic society, notwithstanding the margin of appreciation afforded to States in this domain.

82. Having regard to the above considerations, in particular the political nature of the content which the authorities sought to suppress, the domestic courts' perfunctory approach to assessing the necessity of the interference, their failure to examine the matter in the light of the requirements of the Convention, and the disproportionate nature of the sanctions imposed, the Court finds that the interference with the applicant company's right to freedom of expression was not 'necessary in a democratic society' within the meaning of Article 10 § 2 of the Convention.

83. There has therefore been a violation of Article 10 of the Convention in respect of Google LLC in connection with the sanctions imposed for the failure to comply with the take-down requests.

III. Alleged violation of Article 10 of the Convention in connection with the requirement to provide hosting to Tsargrad TV

84. Google LLC further complained of the disproportionate and unprecedented recurring penalties imposed for the alleged non-compliance with the order to restore Tsargrad's YouTube account. Having regard to Google LLC's submission that these measures formed part of an effort by the Russian authorities to pressure it to provide a platform for expression favourable to Russia's political narrative, the Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 110-26, 20 March 2018), considered that this complaint should be examined as an alleged violation of Article 10 of the Convention, cited above.

A. Admissibility

85. The Court finds that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the applicants

86. Google LLC submitted that the imposition of coercive penalties by the Russian courts, intended to compel it to host content from Tsargrad TV, constituted an interference with its right to freedom of expression. Article 10 encompassed both the positive and negative aspects of freedom of expression, including the right to refrain from providing a platform to certain users or speech, even where such speech is otherwise lawful. Google LLC further relied on established case-law of the Convention organs, which recognises that obligations to publish particular content under threat of legal sanction amount to interference with freedom of expression.

87. As to whether the interference was 'prescribed by law', Google LLC contended that the proceedings suffered from various manifest procedural defects. In addition to improperly assuming jurisdiction, the Russian courts wrongly imposed joint and several liability on all the applicant companies; calculated penalties vastly exceeding any demonstrated loss and unprecedented in judicial practice; enforced penalties despite compliance with the underlying judgment; and conducted enforcement proceedings against Google Russia without basic procedural safeguards.

88. Google LLC further submitted that the interference pursued no legitimate aim. While ostensibly aimed at ensuring compliance with court orders, the court order had already been complied with and the measures were designed to penalise it for adhering to international sanctions, to target companies from Russia's list of 'unfriendly States' and to secure financial gain for entities supporting Russia's actions in Ukraine.

89. Lastly, Google LLC contended that the interference was not 'necessary in a democratic society'. The requirement to host content from sanctioned entities promoting Russian military aggression was neither necessary nor proportionate to any aim pursued. The scale of penalties and their accumulating nature, reaching RUB 57 billion after seven months and approximately RUB 27.3 quadrillion after nine months was disproportionately severe relative to Tsargrad's pre-sanctions daily advertising revenue of RUB 24,400. They also pointed to the proliferation of analogous proceedings resulting in recognised bankruptcy claims exceeding USD 16 trillion, which they argued rendered continued operations in Russia impossible while securing windfalls for the Russian State and State-affiliated and aligned media entities.

2. Existence of interference

90. The Court reiterates that the right to freedom of expression guaranteed by Article 10 of the Convention may also encompass a negative aspect — specifically, the right not to be compelled to express oneself (see *Gillberg v. Sweden* [GC], no. 41723/06, §§ 85–86, 3 April 2012 (*NJ* 2012/621, m.nt. E.A. Alkema; *red.*), and *Semir Güzel v. Turkey*, no. 29483/09, §§ 27–29, 13 September 2016). The Court has consistently held that measures compelling someone to publish specific statements constitute an interference with the right to freedom of expression (see *Kaperzyński v. Poland*, no. 43206/07, § 58, 3 April 2012, and *Hachette Filipacchi Associés v. France*, no. 71111/01, § 27, 14 June 2007 (*NJ* 2008/583, m.nt. E.J. Dommering; *red.*)). It has also found that a holistic protection of freedom of expression should necessarily encompass both the right to express ideas and the right to remain silent: otherwise, the right to freedom of expression under Article 10 cannot be practical and effective (see *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, § 84, 22 October 2024).

91. In the present case, the judicial decisions enjoined Google LLC to host Tsargrad's content on the YouTube platform, thereby overriding its decision not to do so. The Court considers that this compulsion to host specific content, backed by financial penalties, directly impacted Google LLC's right to determine what content it was prepared to host on its platform. This right falls within the scope of Article 10, which protects not only the content of information but also the means of its transmission (see *Autronic AG*, cited above, § 47). The fact that this right was exercised within a commercial context does not exclude it from the protection of Article 10, as the Convention also extends to commercial speech (see *Mouvement raëlien suisse v. Switzerland*

[GC], no. 16354/06, § 61, ECHR 2012 (extracts) (*NJ* 2014/319, m.nt. E.J. Dommering; *red.*)).

92. The Court therefore finds that the domestic courts' orders compelling Google LLC to host specific content on its platform, constituted an interference with its right to freedom of expression under Article 10 of the Convention.

3. Justification for the interference

(a) 'Prescribed by law'

93. As regards the requirement of being 'prescribed by law', the Court reiterates that this implies both a basis in domestic law and compliance with the qualitative requirements of accessibility and foreseeability (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 142, 27 June 2017 (*NJ* 2018/67, m.nt. E.J. Dommering; *red.*)). The courts imposed the astreinte penalty on the basis of Article 308.3 of the Civil Code (...), which provides a mechanism for judicial enforcement of contractual obligations through financial sanctions for non-compliance. The provision empowers creditors to seek specific performance through the courts and authorises courts to impose penalties for non-compliance with judicial orders. While the quantum of any penalty is to be determined by reference to principles of justice, proportionality and *nemo commodum*, the Court takes note of Google LLC's argument that the manner of application of Article 308.3 in the present case contravened these principles, notably as the quantum of the penalty far exceeded previous practice and any loss that might have been suffered.

94. In these circumstances, the Court has serious doubts as to whether the interference was 'prescribed by law' within the meaning of Article 10 § 2. However, even assuming that this requirement was satisfied, the Court considers that the interference was not justified for the reasons set out below.

(b) Legitimate aim

95. As to the legitimate aim, the domestic courts appear to have considered that the measures pursued the aim of protecting the rights of others, specifically Tsargrad's rights as a user of the platforms against what they deemed to be an unlawful suspension of its accounts due to foreign sanctions that allegedly contradicted Russian public order. The Court will accordingly proceed with its analysis on this basis.

(c) 'Necessary in a democratic society'

96. Turning to necessity in a democratic society, the Court reiterates that an interference is only justified if it corresponds to a 'pressing social need', based on 'relevant and sufficient' reasons and is proportionate to the aim pursued (see *Delfi AS*, cited above, § 131 (*NJ* 2016/457, m.nt. E.J. Dommering; *red.*)). Where domestic law does not impose a requirement of proportionality in the context of excessive sanctions, or where the quantum of damages awarded is manifestly disproportionate, there is a risk of creating a 'chilling effect' on freedom of expression (see *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 49, Series A no. 316-B (*NJ* 1996/544, m.nt. E.J. Dommering; *red.*); *Steel and Morris v. the United Kingdom*, no. 68416/01, § 96, ECHR 2005-II (*NJ* 2006/39, m.nt. E.J. Dommering; *red.*); and *Rashkin v. Russia*, no. 69575/10, § 19, 7 July 2020, with further references).

97. As to the existence of a 'pressing social need', the Court notes that, although the domestic courts claimed to be protecting both Tsargrad's contractual rights and the public's right to access information, there have been certain objective inconsistencies in the authorities' approach to the alleged protection of the right to freedom of expression. In this regard, the Court observes that Tsargrad's YouTube account was suspended due to sanctions imposed on its owner for providing financial support to Russian-backed separatists in Ukraine and for publicly endorsing Russia's annexation of Crimea (...). The Court notes that, while purporting to defend freedom to receive information in Tsargrad's case, the Russian authorities were simultaneously demanding that the applicant companies remove content critical of government policies, including political expression regarding Russia's invasion of Ukraine and reporting from independent news outlets (...). These inconsistencies raise doubts as to whether the measures pursued any genuine 'pressing social need' relating to the protection of the right to freedom of expression.

98. As to the proportionality of the penalties imposed, the Court firstly notes that their scale was both unprecedented and manifestly disproportionate. The initial penalty of RUB 100,000 per day was set to double weekly without any upper limit (...). Even after being partially capped, these penalties reached astronomical sums that bore no relationship to any harm suffered by Tsargrad. The Court notes the applicants' submission that Tsargrad's average daily advertising revenue prior to suspension was merely RUB 24,400 (less than € 300 in January 2022), yet the accumulated penalties would have provided it with sums equivalent to many years' worth of revenue within a matter of weeks. The Court notes with particular concern that this initial case served as a model for numerous 'copycat' claims brought by State-owned media outlets, leading to recognised claims against the applicant companies that exceeded USD 16 trillion (...). The escalating nature of the penalties, combined with their extension through 'copycat' claims, rendered it unfeasible for the Google group to maintain its subsidiary in Russia or to retain its attachable property within the Russian jurisdiction.

99. Furthermore, the domestic authorities also displayed a clear determination to continue the recovery of funds even after compliance with the obligation to restore access. Despite restoration of access to Tsargrad's accounts, the bailiff, relying on an expert report prepared within twenty-four hours without notice to, or input from, the party con-

cerned, concluded that 'substantial parts' of functionality remained unrestored due to the disabling of monetisation features (...). This interpretation effectively expanded the scope of the original court order, which had required only the restoration of access without any reference to monetisation features. This rapid and apparently one-sided process, conducted at a stage when the accrual of penalties might otherwise have stopped, raises concerns of bad faith. The Court considers that permitting an expansion of the requirements of a judicial decision, based on expert evidence commissioned without adversarial input, is incompatible with the requirement of legal certainty implicit in all provisions of the Convention.

100. The Court reiterates that any interference with freedom of expression must be proportionate to the legitimate aim pursued and the reasons provided by national authorities must be 'relevant and sufficient'. In this case, the grossly disproportionate penalties imposed as well as the bad faith in the enforcement proceedings demonstrate that the interference with Google LLC's Article 10 rights was disproportionate to whatever legitimate aim that might have been allegedly pursued.

101. There has accordingly been a violation of Article 10 of the Convention in respect of the applicant companies.

IV. Other alleged violations of the Convention

A. Alleged violation of Article 6 § 1 of the Convention on account of deficient reasoning

102. In relation to the administrative proceedings, Google LLC complained under Article 6 of the Convention that the Russian courts had failed to provide sufficient reasoning for the calculation of the fines. Google Russia and Google International, as its sole shareholder, invoked the same provision to claim that the domestic courts had not sufficiently justified the taking of enforcement measures against Google Russia based on the fines imposed on Google LLC. As regards the civil proceedings, all applicant companies complained that their right to a fair trial was violated because the Russian courts provided insufficient reasons for their decisions requiring them to provide YouTube and Gmail hosting and imposing penalties on them for failure to do so.

103. The Court notes that the above complaints are not manifestly ill-founded or inadmissible on any other grounds. Accordingly, they must be declared admissible.

104. The Court reiterates that according to its well-established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. While courts are not required to give a detailed answer to every argument raised, they must indicate with sufficient clarity the grounds on which they base their decision, both to enable the parties to make effective use of any existing right of appeal and to enable the Court to carry out its supervisory function. This obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of the proceedings. Moreover, in cases relating to interference with rights secured under the Convention, the Court seeks to establish whether the reasons provided for decisions given by the domestic courts are automatic or stereotypical (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017, with further references (*NJ* 2019/280, m.nt. P.A.M. Mevis; *red.*)).

105. As regards the administrative proceedings for failure to remove content from YouTube, the Russian courts imposed fines on Google LLC based on the aggregated revenue of multiple entities, including Google Ireland and Google Commerce Limited, without providing adequate justification for the compatibility of this approach with the general principle of the administrative-offences law that sanction be imposed on the offender or demonstrating how it was otherwise grounded in domestic law. In doing so, they did not address Google LLC's objection to the aggregation approach (...). Similarly, in the context of enforcement proceedings against Google Russia for the recovery of the administrative fines, the domestic courts' reasoning was grounded primarily on an allegation that Google Russia functioned as a '*de facto* representative office' of Google LLC, without any detailed analysis of the applicable legal provisions or the factual relationship between the two legal entities or their corporate structure. The courts did not address Google Russia's central argument that, as a separate legal entity, it could not be held liable for fines imposed on Google LLC (...).

106. Turning to the civil proceedings to enforce access to Tsargrad's accounts, the Court finds that the domestic courts failed to provide adequate reasoning for asserting jurisdiction over the dispute, despite the presence of express jurisdictional clauses in the relevant contracts. The courts' generic assertion that sanctions created obstacles to access to justice in the jurisdictions designated by contract was not substantiated by any concrete reasons or evidence. Moreover, the courts failed to address the applicant companies' objection that this presumption was contradicted by material in the case file indicating that Tsargrad's owner had previously engaged in litigation in the United States without his sanctioned status precluding access to justice (...). Furthermore, the courts did not heed a material factual element, namely, that access to Tsargrad's accounts had been restored following the appeal court's decision (...). These were decisive issues requiring specific and explicit judicial responses which were not provided, thereby undermining the very essence of the applicants' right to a reasoned judgment.

107. Having regard to the shortcomings in reasoning identified above, the Court concludes that there has been a violation of Article 6 § 1 of the Convention in respect of all the applicant companies.

B. Remaining complaints

108. Google Russia and Google International alleged a further violation of Article 6 of the Convention, contending that the enforcement procedure did not comply with the standards of fairness required under that provision. As regards the administrative proceedings, Google LLC submitted that the Justice of the Peace for the Court Circuit no. 422 in Moscow lacked jurisdiction over Google LLC and that it had provided insufficient reasoning in several respects. Google LLC, Google Russia and Google International also relied on Article 1 of Protocol No. 1 to the Convention in relation to the imposition of administrative fines on Google LLC for failing to remove content from YouTube, and the subsequent enforcement measures taken against Google Russia. Additionally, all applicant companies complained of a breach of that provision in civil proceedings in connection with the imposition and enforcement of civil penalties, various fines and enforcement costs.

109. In light of its conclusions above, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the admissibility and merits of the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

V. Application of Article 41 of the Convention

110. The applicants did not submit a claim for just satisfaction. Accordingly, it is not necessary for the Court to make an award.

For these reasons, the Court, unanimously, Holds that the Court has jurisdiction to examine the case and the Government's failure to participate in the proceedings presents no obstacles for its examination;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 10 of the Convention in respect of Google LLC in connection with the sanctions imposed for the failure to remove content from YouTube;

4. *Holds* that there has been a violation of Article 10 of the Convention in respect of Google LLC in connection with the requirement to host content from Tsargrad TV on YouTube;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of all applicant companies in connection with the deficient reasoning of the domestic courts;

6. *Holds* that there is no need to examine the remainder of the complaints.

Noot

1. Dit is de laatste noot die ik in de *NJ* schrijf. Daarmee sluit ik een periode van plm. 35 jaar als annotator af. Die periode begon met de noten in de *NJ* jaargang 1991, afleveringen 34 en 42 bij de zaken *Chapell* (nr. 522), *Kruslin* en *Huvig* (nrs. 176 a en b) en *Gaskin* (nr. 659). Dat waren allemaal zaken over vermeende schending van artikel 8 EVRM. Het ging in de eerste periode voornamelijk om uitspraken van het EHRM over de uitleg van de artikelen 8 en 10 EVRM, een enkele maal ook over toepassing van die artikelen door de civiele en de strafkamer van de HR (bijvoorbeeld de zaak *Dexia* door de civiele kamer, *NJ* 2007/638 en 639, en de strafkamer bijvoorbeeld betreffende verkoop van Mein Kampf, *NJ* 2017/259).

2. Het toetsingsverbod van artikel 120 Gw en de directe werking van burgers bindende internationale regels neergelegd in artikel 94 Gw, hebben tot effect dat onze rechtsorde het voor de ontwikkeling van grondrechten van de uitspraken van het EHRM moet hebben. Ik nam het stokje over van Evert Alkema wiens periode als annotator de pioniersperiode van de incorporatie van het EVRM in de Nederlandse rechtsorde zou kunnen worden genoemd. De eerste twintig jaar van mijn periode zou als de periode van consolidatie kunnen worden aangemerkt. Die consolidatie kwam tot uiting in het grote aantal uitspraken van dat Hof dat in die twintig jaar voor publicatie in de *NJ* in aanmerking kwam.

3. Het laatste decennium is de nadruk meer komen te liggen op uitspraken van het HvJ EU. Dat heeft verschillende oorzaken. Artikel 6 van het Unieverdrag incorporeert het EU Handvest van de Grondrechten van de Unie in het EU recht. Het HvJ EU is daardoor als hoogste rechter in de EU het Handvest en de daarin geformuleerde grondrechten bij de uitleg en toepassing van het EU recht gaan toepassen. Daar komt de toenemende betekenis van de verwerking van persoonsgegevens in onze samenleving bij. De EU heeft daarvoor een sterk juridisch instrument in de vorm van de Algemene Verordening Gegevensbescherming (EU 2016/679) ontwikkeld, dat in tal van maatschappelijke sectoren zijn werking doet gelden om de macht van organisaties en opzichte van individuen te reguleren. Het HvJ EU is op dit gebied leidend geworden. Het EHRM richt zijn arresten zo in dat daarin eerst het relevante internationale en nationale recht wordt weergegeven. In dit soort zaken neemt het steeds meer het EU recht op. Wel moet de uitleg van het EVRM door beide Hoven op elkaar afgestemd worden (art. 52 lid 3 Titel VII van het Handvest). De laatste tien jaar nam het aantal te annoteren HvJ EU-uitspraken zienderogen toe.

4. De te commentariëren beslissing is gekozen omdat zij relaties heeft met de twee rechtsordes: zoekmachines en internet in relatie tot de vrijheid van meningsuiting enerzijds, de regulering van internetplatforms (waaronder zoekmachines) in het EU recht anderzijds. De annotatie is een terugblik en een vooruitblik.

Terugblik: De zaak EHRM 8 juli 2025, appl. 37027/22 inzake Google/Rusland

5. De zaak betreft een klacht van Google c.s. tegen Rusland voor het opleggen van aanzienlijke fi-

nanciële sancties voor het niet gevolg geven aan de eis van de regering 'for the removal of *political-opposition and war-reporting content* from YouTube' en *'for the hosting of content from a Russian television channel'*. Het betreft de toepassing van een nieuwe wet door de bevoegde autoriteit *Roskomnadzor* (een passende naam voor een internet-Grootinquisiteur). In de bewoordingen van het Hof: *In December 2020 the Russian authorities, confronted with the non-compliance of multinational content-sharing platforms, such as Meta's Facebook and Instagram, Twitter and Google's YouTube, with their requests to remove political speech and criticism from their platforms, enacted the new Article 13.41 of the Code of Administrative Offences ('the CAO'). The new provision granted Russia's telecommunications regulator (Roskomnadzor, 'the RKN') broad powers to seek large fines against platform owners who failed to comply with 'notifications on restricting access to the information resource' ('take-down requests' or TDRs) concerning content considered unlawful under section 15.3 of the Information Act. On 10 January 2021 the new provision came into force.* Het ging o.a. om het doorgeven via de zoekmachine van uitzendingen van de toen nog niet gedetineerde Navalny en van de berichtgeving over het begin van de oorlog in Oekraïne. De opgelegde sancties waren opgelopen tot (omgerekend) € 87 miljoen. Google ging hiertegen in beroep, maar de Vrederechter deed er in hoger beroep nog eens plm. € 280 miljoen bovenop, gebaseerd op de omzet van alle Google-ondernemingen in Rusland, ook die welke geen partij waren in de procedure.

6. Daarnaast speelde een commercieel geschil tussen Google en Tsargrad, een Russische mediagroep waarvan een zekere K.M. de eigenaar is, een Russische zakenman aan wie de EU, de VS en Canada sancties hadden opgelegd wegens het geven van materiële steun aan de Russische separatisten in het Oostelijk deel van Oekraïne en het openlijk steunen van de Russische invasie van de Krim. Het geschil betrof het niet meer doorgeven van de uitzendingen van Tsargrad. Hierover startte Tsargrad een commercieel geschil voor de daartoe bevoegde rechter die hem in twee instanties in het gelijk stelde wegens strijd met de inmiddels aangepaste Russische wet die de sancties tegen Rusland in strijd met het recht had verklaard. Vervolgens ontspon zich een wirwar van geschillen tussen Tsargrad en Google wegens het door Tsargrad leggen van beslag op de bezittingen van Google in Rusland, die Tsargrad allemaal won.

7. De succesvolle acties van Tsagard inspireerde andere Russische ondernemingen om geschillen tegen Google aanhangig te maken (het EHRM noemt deze 'copycat-claims' van de procedures van Tsargrad). Dat liep op tot een claim van € 16 miljard. Dat was voor Google Rusland te machtig zodat deze haar faillissement aanvroeg, de enige vordering van Google die direct door de Russische rechter werd toegewezen. Bij het relevante recht noemt het EHRM Recommendation CM/Rec(2018)2 of the Committee of Ministers of the Council of Europe to member States on the roles and responsibilities of internet intermediaries, aangenomen in 2018. En, het noemt ook de EU *Digital Services Act* (Verordening 2022/2065 van het Europees Parlement en de Raad betreffende een eengemaakte markt voor digitale diensten (wet inzake digitale diensten), hierna Digital Services Act (of DSA) die voor zeer grote platforms als Google allerlei regels bevat. Het EU recht is dus mede leidend voor het EHRM.

8. Rusland weigerde verweer te voeren in deze procedure, maar dat is voor het Hof geen beletsel om over de zaak te beslissen. Dat Rusland inmiddels geen lid meer is van de Raad van Europa is evenmin een beletsel, omdat ten tijde dat de feiten werden begaan dat nog wel het geval was. Dat Google Rusland inmiddels niet meer bestaat is ook geen belemmering. Het Hof: *Striking the application out of the list under such circumstances would undermine the very essence of the right of individual applications by legal persons, as it would encourage governments to deprive such entities of the possibility to pursue an application lodged at a time when they enjoyed legal personality.*

9. Het EHRM heeft als eerste (d.w.z. vóór het HvJ EU) twee arresten gewezen waarin het een platform/zoekmachine onder omstandigheden mede verantwoordelijk achtte voor de verspreiding van informatie van derden (*Delfi AS tegen Estland*, EHRM 16 juni 2015, *NJ* 2016/457, m.nt. E.J. Dommering, gevolgd door een Hongaarse zaak, *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt tegen Hongarije*, appl. 22947/13, *NJB* 2016/827). Ik heb de annotatie uitgewerkt in mijn boek *De Europese informatierechtsorde,* hoofdstuk VIII. 2, pp. 329-344, getiteld 'Internetplatforms als een nieuwe vorm van openbaarheid: de verantwoordelijkheid van de discussieplatforms'. In de onderhavige zaak noemt het Hof de zaak *Delfi AS* als precedent.

10. De hier geannoteerde uitspraak belicht een belangrijk aspect, namelijk het geval dat de nationale overheid om politieke redenen (met gigantische sancties) belet dat er politiek gevoelige informatie via een zoekmachine wordt verspreid. Het Hof gaat daar uitvoerig in de overwegingen 74 e.v. op in. De platforms (inclusief de zoekmachines) krijgen meer en meer een democratische functie, die bescherming van artikel 10 EVRM nodig maakt, zo stelt het hof vast. Maar, voeg ik er aan toe, anderzijds is er een toenemende ongerustheid over het soort informatie dat de zoekmachines zonder redactionele controle verspreiden. Te denken valt aan aanvallen op personen (beschadigingen van reputatie, dreigementen, hate speech, privacyschendingen). Dat was in de zaak *Delfi* al het geval, maar het HvJ EU werd er ook al mee geconfronteerd (zie hoofdstuk VIII, 3 in het geciteerde *De Europese informatierechtsorde* en de uitspraken van het HvJ EU 3 oktober 2019 *NJ* 2019/436, m.nt. E.J. Dommering (*Facebook*), HvJ EU 24 september 2019, *NJ* 2019/434, m.nt. E.J. Dommering en *NJ* 2019/435, m.nt. E.J. Dommering (*Google/Frankrijk*)). Het huidige EU recht richt zich op beperkingen in het belang van de vrijheid van meningsui-

ting. Het besteedt in de Digital Services Act veel aandacht aan de verantwoordelijkheid van de 'zeer grote' intermediairs (platforms, zoekmachines) verspreiding van 'desinformatie' (opzettelijk misleidende informatie) tegen te gaan. De verplichting om het verspreiden van 'desinformatie' te voorkomen, wordt afgedwongen door hoge geldboetes. Een ander voorbeeld is de politieke reclame (zie daarover S. Maasbommel, *Mediaforum* 2025/6, p. 225 e.v. 'Eerste verkiezingscampagne onder nieuwe EU-regels: niet geld maar het algoritme telt') en de daarbij ingezette techniek van microtargeting (dezelfde auteur, *Ruimte voor regulering van microtargeting,* https://books.ugp.rug.nl/ugp/catalog/book/194 geraadpleegd 30-12-2025) waarmee de kiezer een werkelijkheid wordt voorgeschoteld die op hem of haar is afgestemd, zodat ze van een daarbij passend emotioneel frame kan worden voorzien, zonder dat hij of zij dat in de gaten heeft. Daarmee is bijvoorbeeld het Brexit-referendum in de UK in sterke mate beïnvloed. Andere voorbeelden zijn beide verkiezingen waarin Trump als de winnaar eindigde, en ook de recente Nederlandse verkiezingscampagnes.

Daarbij komt dat dit soort beïnvloeding in de naaste toekomst door inzet van AI technieken zal plaatsvinden. Daarvoor is het Europese toetsingskader in de huidige AI verordening niet voldoende (vgl. mijn bijdrage 'De Grondwet en Artificiële Intelligentie', in: *De Grondwet en de nieuwe technologie: klaar voor de toekomst?* Den Haag: Ministerie van Binnenlandse Zaken 2024, p. 69-85).

Vooruitblik: Het nieuwe media landschap in Rusland, de VS en Europa

11. Het is de paradox van het EVRM dat de landen in het voormalige Oostblok (Rusland) de casuïstiek hebben aangeleverd voor de ontwikkeling van de interpretatie van het verdrag, die heeft bijgedragen aan de ontwikkeling van de betekenis van het recht in Europa, maar niet van nut is geweest voor de rechtspraktijk in het eigen land. Die is in Rusland eerder verslechterd dan verbeterd. De berichten die naar buiten komen over de manipulatie van de Russische 'publieke opinie' in verband met de oorlog in Oekraïne doen denken aan de roman *Nineteen eighty-four* van George Orwell (Bijvoorbeeld de documentaire *Mr Nobody against Putin,* gemaakt door een Russische leraar; vanaf half januari 2026 was deze te zien in Nederland).

12. De Amerikaanse internet-dochterondernemingen in Europa (Metis enz.) kunnen een aanval openen op de regulering van de digitale platforms in de EU. Omdat vicepresident Vance in februari van 2025 de EU ervan beschuldigde dat de Europese regulering (m.n. voor digitale media en AI) in strijd is met de vrijheid van meningsuiting, zullen zij een doorgeslagen Amerikaanse opvatting over de vrijheid van meningsuiting verdedigen, die niet past in de Europese opvatting (zolang het populisme het hier niet voor het zeggen heeft). Vrijheid betekent volgens Trump dat eigen vrijheden niet beperkt mogen worden, hoe deze ook worden uitgeoefend. De aanval op het Capitool vormde een belangrijk beeld van de aanval op de vrijheid in de film over het werk van George Orwell (*Two plus two is five* van Raoul Peck 2025, in dat jaar ook te zien in Nederland). Die Europese opvatting heb je wel nodig om een grens te kunnen trekken tussen desinformatie (opzettelijk onjuiste informatie), misinformatie (niet opzettelijk onjuiste informatie), gekleurde informatie (levensovertuiging), ondemocratische meningen, door emotie gestuurde informatie ('hate speech'), en 'microtargeting' (verborgen individueel gerichte informatie). Daarbij komt nog een ander aspect: de machtsvorming van deze digitale sociale media ten opzichte van de traditionele media. De Nederlandse Autoriteit Consument en Markt (ACM) heeft op 27 juni 2025 een opmerkelijke beslissing gegeven waarbij hij de overname van RTL Nederland door DPG Media (een voor de Nederlandse markt ongekende machtspositie) goedkeurde, kort gezegd, als verdediging tegen de machtspositie van Meta, Google en Tik-Tok op de reclamemarkt (voor zowel commerciële als politieke boodschappen). De instandhouding van de redactie van de pers en omroep is voor de openbare meningsvorming niet te missen.

13. Het EHRM zal er bij een vraag of de DSA of andere EU-regulering in overeenstemming is met het EVRM niet aan te pas komen. Deze vragen zal het HvJ EU moeten beantwoorden in een prejudiciele procedure door een toetsing van het EU-recht aan het Handvest (Vgl. mijn artikel in *Auteursrecht* 2022, nr. 4 over de zaak *Polen/Europees Parlement*, HvJ EU 26 april 2022, ECLI:EU:C:2022:297). Het HvJ EU zal daarbij moeten afstemmen op de rechtspraak van het EHRM.

14. Dit leidt tot een algemene voorspelling: De komende decennia zullen wij getuige zijn van een algehele technische verbouwing van het traditionele medialandschap die de vorming van de publieke opinie ingrijpend zal beïnvloeden. De grondrechten zullen een juridische omzetting van de fundamentele beginselen uit het oude landschap naar het nieuwe tot stand moeten brengen. De vraag is of die voldoende bescherming zullen bieden in de nieuwe context waarin zij moeten functioneren. Dat zal mede afhangen van de vraag of het model van een rechtstaat-democratie met een vrije meningsvorming in het Westen, althans in Europa, standhoudt.

E.J. Dommering

NJ 2026/53

HOF VAN JUSTITIE VAN DE EUROPESE UNIE
19 december 2024, nr. C-157/23
(I. Jarukaitis, D. Gratsias, E. Regan;
A-G M. Campos Sánchez-Bordona)
met redactionele aantekening

Art. 3 lid 1 Richtlijn 85/374